

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on January 31, 2003 at 8 A.M., in Room 137 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. George Everett (R)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Michael Lange (R)  
Rep. Bruce Malcolm (R)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. John Parker (D)  
Rep. Holly Raser (D)  
Rep. Diane Rice (R)  
Rep. Scott Sales (R)  
Rep. Ron Stoker (R)  
Rep. Bill Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Lisa Swanson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing & Date Posted:

Executive Action: HB 281; HB 293; HB 308; HB 247; HB  
26; HB 316; HB 211; HB 282; HB 124;  
HB 255

**EXECUTIVE ACTION ON HB 281**

**Motion:** REP. SALES moved that HB 281 DO PASS.

**Discussion:**

REP. SALES explained that HB 281 would expand authority to the Board of Regents on whether they want to hire a Commissioner of Higher Education. REP. RICE stated she would support the bill as we are at a time of budgetary constraints and that this bill would give the Board an extra tool to deal with the budget crisis. REP. HARRIS stated that this bill will confuse the voters and they may not understand the bill's purpose. He stated that amending the Constitution should be done very rarely. CHAIRMAN SHOCKLEY stated putting the job description in the Constitution was inappropriate and should be amended out.

REP. FACEY stated that the motive behind the bill is good, that of accountability and saving money, but that there will not be direct savings here. He stated that the public voted on this issue in the past already. He stated he resists this motion.

REP. THOMAS stated he was opposed to this bill but has changed his mind. He stated that the Board should have the discretion of whether to hire a Commissioner because they are closer to the people.

**Vote:** Motion DO PASS HB 281 failed 9-9, by roll call vote, with REPS. LASZLOFFY, SALES, LANGE, RICE, MALCOLM, THOMAS, EVERETT, NEWMAN, and SHOCKLEY voting aye.

**Motion/Vote:** REP. GALLUS moved that HB 281 BE TABLED. Motion carried unanimously by voice vote.

**EXECUTIVE ACTION ON HB 293**

**Motion:** REP. NEWMAN moved that HB 293 DO PASS.

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**Discussion:**

REP. RICE stated that although this is a better bill than last session, she is still opposed to this bill. REP. NEWMAN urged the Committee to consider the bill favorably. He stated this is a good local control compromise to racial profiling. REP. EVERETT commented that there have only been two racial profiling cases according to Pam Bussey's testimony. He questioned whether

this is a real problem in Montana. **REP. NOENNIG** stated he had a problem with the statistical baseline but he felt this bill is the right way to go.

**Vote:** Motion that HB 293 DO PASS carried 14-2 by voice vote with **REPS. EVERETT** and **RICE** voting no.

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**EXECUTIVE ACTION ON HB 308**

**Motion:** **REP. PARKER** moved that HB 308 DO PASS.

**Discussion:**

The Committee discussed whether the bill is clear regarding the registration of offenders. Also, whether an offender must re-register when moving from one neighborhood to another. **REP. NEWMAN** stated an offender must register in the county where they reside. **REP. FACEY** stated he will vote for this bill but that there is not a lot of comfort that this law will be effective. **CHAIRMAN SHOCKLEY** stated the biggest cost will be the costs associated with the actual notification.

**Vote:** Motion HB 308 DO PASS carried unanimously by voice vote.

**EXECUTIVE ACTION ON HB 247**

**Motion:** **REP. HARRIS** moved that HB 308 DO PASS.

**Motion:** **REP. HARRIS** moved that HB 308 BE AMENDED.

**Discussion:**

**REP. SALES** stated the amendment is redundant. **REP. FACEY** stated this bill could have unintended consequences by denying the peace officer's power.

**Vote:** Motion that HB 247 BE AMENDED carried 15-1 by voice vote with **REP. SALES** voting no.

**Motion:** **REP. HARRIS** moved that HB 247 DO PASS AS AMENDED.

**Discussion:**

**REP. HARRIS** stated that the crime of vagrancy needs to be removed from the books. He stated a woman in Bozeman was arrested for

vagrancy while standing by a Target store. He stated she had to be involved in the criminal justice system for six months before the judge in Bozeman ordered the case dismissed.

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**REP. RICE** stated her concerns about homeless people sleeping on sidewalks and other public places. **REP. NEWMAN** stated that if a person interferes with pedestrian traffic, or is camping out in city parks, peace officers would have tools to deal with those situations. **REP. THOMAS** stated that the Hell's Angels came to Townsend and he worried that this bill may prevent peace officers from keeping control. **REP. FACEY** commented that Missoula had 2,000 bikers in town which Missoula did not want to come. **REP. HARRIS** explained that the bill would only take vagrancy out of the criminal code, and would leave the crimes of criminal trespass, loitering, disorderly conduct and disturbing the peace.

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**Vote:** Motion HB 247 DO PASS AS AMENDED carried 15-2 by voice vote, with REPS. SALES and THOMAS voting no.

***{Tape: 1; Side: B; Approx. Time Counter: 185 - 210}***

#### **EXECUTIVE ACTION ON HB 26**

**Motion:** REP. GUTSCHE moved that HB 26 DO PASS.

**Motion:** REP. GUTSCHE moved that HB 26 BE AMENDED.

#### **Discussion:**

**REP. NEWMAN** stated that there is another bill, HB 211, which is similar to HB 26, but which does not mandate that a Board member be a Native American. He stated that HB 211 requires all Board members to have knowledge of the Native American culture. He stated that REP. JUNEAU liked the idea that all members of the Board have training in Native American culture but she is adamant that at least one member of the Board be Native American. **REP. GUTSCHE** stated that the Committee should proceed with REP. JUNEAU'S bill. She explained that this amendment came about from Tony Plummer who requested the tribal government have a say in who is appointed to the Board.

**Vote:** REP. GUTSCHE moved HB 26 BE AMENDED. Motion carried 16-2 by voice vote with REPS. SALES and STOKER voting no.

**Motion:** REP. GUTSCHE moved that HB 26 DO PASS AS AMENDED.

**Discussion:**

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REP. HARRIS suggested amending the bill to strike "American Indian" and to insert "representative of a tribal government." REP. GUTSCHE asked whether he talked with REP. JUNEAU about his proposed amendment. REP. HARRIS responded that he did not and believed that REP. JUNEAU would not agree to his amendment. He stated that by replacing "Native American" with race neutral language, you would accomplish the same objective and the bill would more likely pass. REP. GUTSCHE commented that his suggestion would not carry forth the intent of the bill which is to ensure that at least one member on the Board is a Native American.

**Motion/Vote:** REP. HARRIS MOVED that HB 26 BE FURTHER AMENDED (Harris Amendment) carried 12-6 by roll call vote, with REPS. CLARK, EVERETT, GUTSCHE, NEWMAN, PARKER, SALES, and STOKER voting no.

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**Discussion:**

REP. CLARK stated that the problem is that they don't know what the problem is. He emphasized that the Committee does not know why there is a disproportionate number of Native Americans on the Board. He stated that he would like to put someone on the Board who knows and understands Native American culture, issues and problems. REP. STOKER commented that all Native Americans incarcerated at Deer Lodge, committed crimes off the reservations. He stated he does not believe in making a special category for a Native American Board member.

REP. NOENNIG commented that the Board is a citizen board and it is hard to find qualified members to serve on the Board. He stated it is important that the law does not tie the Board's hands and would therefore oppose the bill. REP. NEWMAN mentioned the George decision. He explained that under George, a Native American Indian could demand an Indian on the parole board. REP. GALLUS emphasized that REP. JUNEAU brought forth a valid concern.

He stated that the Board is responsible for executing a successful discharge parole plan. He stated that he will support the bill and that it would lead to a better system. **REP.**

**LASZLOFFY** stated he likes HB 211, but will oppose this bill.

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**Motion/Vote:** **REP. GUTSCHE** moved that HB 26 DO PASS AS FURTHER AMENDED. Motion failed 9-9, by roll call vote, with REPS. CLARK, HARRIS, FACEY, GALLUS, PARKER, RASER, GUTSCHE, NEWMAN, and SHOCKLEY voting aye.

**Motion/Vote:** **REP. LASZLOFFY** moved that HB 26 BE TABLED. Motion carried 16-1 by voice vote, with **REP. GUTSCHE** voting no.

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#### EXECUTIVE ACTION ON HB 316

**Motion/Vote:** **REP. SHOCKLEY** moved that HB 316 BE TABLED. Motion carried unanimously by voice vote.

#### EXECUTIVE ACTION ON HB 211

**Motion:** **REP. NEWMAN** moved that HB 211 DO PASS.

**Motion/Vote:** **REP. NEWMAN** moved that HB 311 BE AMENDED. Motion carried 15-0, by voice vote.

**Motion:** **REP. NEWMAN** moved that HB 211 DO PASS AS AMENDED.

#### Discussion:

**REP. NEWMAN** stated HB 211 is a more rational way to address the George decision. He explained that this bill would expand the Board by increasing auxiliary members by two.

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He stated this bill would allow a hearing in front of two, instead of three, members which would help with time and expense. He stated that in the case of a one-to-one split, that a three-member Board would be required. He emphasized that the Board is a part-time citizen Board and HB 211 would help them do their job more efficiently and economically.

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**REP. THOMAS** supported the bill and believed it is a much better approach than demanding that one Board member be a Native American. **REP. RASER** stated that this is a good bill but that there is a compelling reason to have a Native American on the Board. She emphasized there is a huge difference between having knowledge of a culture and being a member of the culture.

***{Tape: 2; Side: B; Approx. Time Counter: 25 - 75}***

**Vote:** Motion that HB 211 BE AMENDED carried 15-0.

**Motion:** **REP. NEWMAN** moved that HB 211 DO PASS AS AMENDED.

**Discussion:**

**REP. RASER** stated that she wanted to allow the three members with four auxiliary members plus **REP. GUTSCHE'S** and **REP. HARRIS'S** amendments. **REP. NEWMAN** stated that he would like **REP. RASER** to withdraw her amendments because of the 9-9 vote on HB 26; he feared the same result for this bill with her amendments. **REP. RASER** stated she would not withdraw her amendments.

**Vote:** Motion that HB 211 BE AMENDED (Raser amendments) failed 4-14 by roll call vote, with **REPS. FACEY, GALLUS, HARRIS, and RASER** voting aye.

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**Vote:** Motion that HB 211 DO PASS AS AMENDED carried 18-0 by voice vote.

**EXECUTIVE ACTION ON HB 282**

**Motion:** **REP. RASER** moved that HB 282 DO PASS.

**Motion:** **REP. PARKER** moved that HB 282 BE AMENDED.

**Discussion:**

The Committee discussed the amendments which **REP. PARKER** proposed.

**Vote:** Motion that HB 282 BE AMENDED carried 15-1 by voice vote with **CHAIRMAN SHOCKLEY** voting no.

**Motion:** **REP. STOKER** moved that HB 282 DO PASS AS AMENDED.

**Discussion:**

The Committee discussed whether to leave the language regarding the drugs. **REP. HARRIS** stated that when a person has drugs or alcohol, and drives, they are liable under this bill. He stated that Mr. Connor would not have been held accountable under this bill.

**Vote:** Motion that HB 282 BE AMENDED FURTHER (Harris amendment) carried 15-2 by voice vote, with REPS. NEWMAN and SALES voting no.

**Motion/Vote:** REP. CLARK moved that HB 282 BE TABLED. Motion carried 12-6 by roll call vote, with REPS. FACEY, HARRIS, LANGE, PARKER, RASER, and THOMAS voting no.

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**EXECUTIVE ACTION ON HB 124**

**Motion:** REP. GALLUS moved that HB 124 DO PASS.

**Motion:** REP. NEWMAN moved that HB 124 BE AMENDED.

**Discussion:**

The Committee discussed the fiscal note. John MacMaster explained that the draft fiscal would greatly reduce the fiscal note by approximately \$800,000 a year.

**Vote:** Motion that HB 124 BE AMENDED carried unanimously by voice vote.

**Motion:** REP. FACEY moved that HB 124 DO PASS AS AMENDED.

**Vote:** Motion HB 124 DO PASS AS AMENDED failed 9-9, by roll call vote, with REPS. CLARK, HARRIS, PARKER, NOENNIG, MALCOLM, THOMAS, STOKER, NEWMAN, and SHOCKLEY voting aye.

**Motion/Vote:** REP. CLARK Moved HB 124 BE TABLED. Motion carried 13-5 by voice vote with REPS. GALLUS, HARRIS, NEWMAN, NOENNIG, and PARKER voting no.

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**EXECUTIVE ACTION ON HB 255**

**Motion:** REP. GUTSCHE moved that HB 255 DO PASS.

**Motion:** REP. SHOCKLEY moved that HB 255 BE AMENDED.

**Discussion:**

**CHAIRMAN SHOCKLEY** explained that the bill, brought by REP. COHENOUR, would impose a \$100 surcharge on a person convicted of driving under the influence of alcohol. The proponents of the bill want the surcharge off the front end and to all go to the arresting law enforcement agency. **CHAIRMAN SHOCKLEY** explained that his proposed amendment would put the \$100 surcharge in the mix and the Academy would receive there share of the mix, essentially get in line, along with everyone else.

**Vote:** Motion that HB 255 BE AMENDED carried unanimously by voice vote.

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**Motion:** REP. CLARK moved that HB 255 DO PASS AS AMENDED.

**Discussion:**

**REP. RICE** stated that she opposed this bill. She noted the JP's and the Magistrates testified this bill would create an accounting nightmare. She stated the Sheriff's and Peace Officer's Association opposed this bill. **REP. PARKER** stated his concern that the bill creates a non-evidence based reason for an officer to make an arrest. He stated the bill is well intentioned, to fund law enforcement, but he wants to tell a jury the stop was motivated by poor driving or a traffic offense.

**Motion/Vote:** REP. LASZLOFFY moved that HB 255 BE TABLED. Motion carried 16-2 by voice vote, with REPS. HARRIS and THOMAS voting no.

**ADJOURNMENT**

Adjournment: 12 P.M.

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REP. JIM SHOCKLEY, Chairman

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LISA SWANSON, Secretary

JS/LS

**EXHIBIT** (juh21aad)